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Foreign Claims Settlement Commission of the United States 1985 Annual Report

*Including the Final Report
on the Vietnam Claims Program.*

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**Foreign Claims Settlement
Commission of the United States
1985 Annual Report**

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on the Vietnam Claim Program.*



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FOREIGN CLAIMS SETTLEMENT COMMISSION

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LETTER OF TRANSMITTAL

To the President of the Senate and the
Speaker of the House of Representatives of
the 99th Congress.

The Foreign Claims Settlement Commission submits
for your examination its Annual Report for the
Calendar Year 1985.

This report covers the Commission's activities
during 1985. In addition, the report contains a final
report of the five year program to adjudicate certain
claims against Vietnam mandated by the Congress in
Public Law 96-606. Although this program was not
completed until February 25, 1986, it appeared
expedient to delay preparation of the 1985 Annual
Report to allow early publication of a complete review
of all aspects of the program under one cover.

Since the Commission is a separate agency within
the United States Department of Justice, a summary of
the Commission's activities during Fiscal Year 1985
appears in the annual report of that department. The
Commission, however, is also required, pursuant to the
pertinent provisions of the War Claims Act of 1948 and
the International Claims Settlement Act of 1949, to
submit a separate report to the Congress.

Bohdan A. Futey
Chairman

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SECTION I: THE COMMISSION

A. Introduction

The Foreign Claims Settlement Commission is a small quasi judicial federal agency which has been authorized over the years by specific legislation to determine claims of United States nationals for loss of property in specific foreign countries. These losses occurred either as a result of nationalization of property by foreign governments or from damage and loss of property as a result of military operations during World War II. In addition, the Commission has determined claims of United States military and civilian personnel who have been held in a captured status during World War II and the Korean and Vietnam conflicts.¹

The Commission consists of a Chairman, who serves on a full time basis, and two Commissioners, who serve on a part-time basis, all of whom are appointed by the President, by and with the advice and consent of the Senate, for three year terms. The Chairman and Commissioners as a body are responsible for the review of claims and the issuance of decisions thereon. The

¹ The present Commission was created on July 1, 1954 by Reorganization Plan No. 1 of 1954, wherein the War Claims Commission and the International Claims Commission were abolished and their functions transferred to the present Commission. During 1980, the Commission was transferred by Public Law 96-209 to the Department of Justice as a separate agency within that department.

Chairman of the Commission is vested with sole administrative authority, while the Department of Justice is directed to provide certain administrative support. The Commission employs a small staff of attorneys and administrative personnel.

The work of the Commission is unique in that its operating expenses are only partially, if at all, borne by the United States taxpayers. In most instances the authorizing statutes provide for the payment of the Commission's awards from funds obtained either from the liquidation of foreign assets blocked in the United States or from funds obtained from foreign governments by negotiation of a claims settlement agreement. The statutes normally provide for the deduction of a certain percentage from a claims fund so obtained for deposit as miscellaneous receipts in the United States Treasury to defray the administrative expenses of the Commission and the Department of the Treasury in carrying out the programs. The total administrative expenses of the Commission and its predecessors from the beginning of fiscal year 1950 through the end of fiscal year 1984 have amounted to approximately \$25 million, whereas \$32 million has been recouped.

The jurisdiction of the Commission and its two predecessor commissions has encompassed the administration of 40 claims programs in which more than 660,000 claims have been filed and awards granted in excess of \$3 billion.

B. Procedure and Administration of Claims Programs

The decisions of the Commission are final and conclusive on all questions of fact and law and are not subject to review by any other official, department, or agency of the United States, or by any court by mandamus or otherwise. This prohibition against judicial or other review makes it imperative that the Commission establish appropriate administrative and legal procedures to assure claimants a full and fair opportunity to present their claims.

When a claims program is commenced, appropriate claim forms and detailed instructions are forwarded to anyone who so requests them or has at any time indicated to the Commission an interest in filing a claim in that program. The Commission also seeks to publicize the program through the news media, and by notifying relevant organizations and Congressional offices. The Commission sets a final date for filing claims within the time limits normally prescribed by statute.

When a claim form with related exhibits, documents or other evidence is filed, the staff of the Commission examines it and, if necessary, seeks additional information or evidence from the claimant or other sources to attempt to establish the requisite elements of nationality, ownership, value and the date and circumstances of the asserted loss. When a claim has been fully developed, it is presented to the Commission for decision. After full review of the claim and all supporting material, the Commission issues a written proposed decision.

This decision is forwarded to the claimant or claimant's counsel who is advised of the right to file objection within a specified period of time, if the claimant is dissatisfied and believes there is ground for a more favorable decision. The claimant may submit, in writing, any additional evidence and argument in support of the objection and, in addition, may request an oral hearing before the Commission to present oral evidence and argument in support of the objection. Thereafter, the Commission reconsiders the entire record and renders its determination by the issuance of a written final decision. If no timely objection is received by the Commission, the proposed decision is automatically entered as the final decision of the Commission. Even after the issuance of a final decision, the regulations of the Commission permit the filing of a petition to reopen a claim for further consideration based upon newly discovered evidence, or, if information comes to the attention of the Commission through sources other than the claimant, the Commission, on its own motion, may reopen the

claim to allow a more favorable decision. In each program a time limit within which the Commission must complete all its affairs in that program is established by statute. After such date the Commission no longer has authority to reconsider any claim which has been determined in that program.

Decisions of the Commission always set forth the reason for Commission action and contain specific findings of fact and conclusions of law determining each aspect of the claim. The Commission always attempts to make the claimant fully aware of the basis of the Commission's decision. The adjudication of a claim is not considered to be an adversary matter between the Commission and the claimant. The staff of the Commission seeks to do all that is reasonably possible to assist the claimant in establishing a compensable claim. In most programs, however, insufficient funds are available to pay the full amount of awards made by the Commission, resulting in a pro rata payment of such awards. Therefore, the Commission considers that in reaching a determination on any particular claim it has a duty to all other successful claimants to see that the claim meets the requirements of compensability and that any award granted is reasonable and based upon the same criteria as all other awards.

Payment of awards granted to claimants is not the responsibility of the Foreign Claims Settlement Commission. The Commission's responsibility is discharged upon entry of a final decision and certification of any award to the Secretary of the Treasury, who has sole jurisdiction, under specific statutory authority, to make payments out of any funds created for that purpose.

In some programs there are no funds available when the adjudication of claims is authorized by the Congress. In such cases, the Commission may be directed to determine claims and certify the total of its awards to the Secretary of State as a "presettlement adjudication" to assist the Department of State in negotiating a claims settlement agreement.

SECTION II: CURRENT YEAR'S ACTIVITIES

During 1985, the Commission completed a three-year program to adjudicate certain claims against Czechoslovakia. Between the beginning of the year and February 25, 1985, the Commission's activities were devoted fully to the completion of this program, in particular, securing all possible last minute information from the Government of Czechoslovakia, and where such information allowed, reopening claims previously denied through lack of sufficient evidence. The statutory deadline for completion of this program was February 25, 1985 and a final report on the program, including the activities during 1985, was included in the 1984 Annual Report.

Most of the Commission's activities throughout the remainder of 1985 were devoted to the adjudication of claims against the Socialist Republic of Vietnam. This program was concluded on February 25, 1986. The Commission's activities during 1985 concerning the program involving Vietnam are included within the final report on that program contained in Section III of this report.

The Commission continued to exercise its jurisdiction under the War Claims Act of 1948, as amended, by Public Law 91-289, to make payment on claims of civilian American citizens and ex-prisoners of war who were held or captured by hostile forces in Southeast Asia during the Vietnam conflict. The statute provided for payment of \$150.00 per month for any civilian American citizen who was captured and interned by hostile forces and payments to members of the Armed Forces of the United States who were prisoners of war and received inadequate quality and quantity of food, for which compensation was payable

at the rate of \$2.00 per day, or suffered from various other violations of the Geneva Convention, for which they were entitled to an additional \$3.00 per day.

In most instances, the time for filing claim under these programs has passed, however, the Commission considered one claim where it was asserted that a member of the Armed Forces who had been listed by the Department of Defense as Missing in Action should be found by the Commission to have been a prisoner of war. As no evidence was submitted to this effect and as the Commission's investigation was unable to discover any evidence in support of the assertion, the claim was denied.

As of December 31, 1985, payment in the amount of \$5,344,990 had been made in 734 claims to former prisoners of war or their survivors and \$229,337 had been made in 41 claims to civilian internees.

In addition to the consideration of claims against Czechoslovakia and Vietnam, the staff of the Commission was called upon to provide technical information concerning a number of claims against the German Democratic Republic. This was to assist the Department of State in its continuing negotiations to obtain a lump sum claims settlement to be distributed to award holders from the program concluded by the Commission in 1981.

The staff of the Commission also worked to assist the Department of the Treasury in locating claimants who held awards against Czechoslovakia in a program concluded by the Commission in 1962 under Title IV of the International Claims Settlement Act of 1949, as amended. Pursuant to a claims settlement obtained in 1982, additional payments were due to these claimants; however, with the passage of time many of them were difficult to locate. The Commission, therefore, used its resources to assist in locating as many of these claimants as possible.

During the latter months of 1985, the staff of the Commission worked in conjunction with the Department of State to assist that department to carry out

negotiations with the Provisional Military Government of Socialist Ethiopia. These negotiations culminated in a lump sum claims settlement signed on December 19, 1985. Under this settlement, the Ethiopian government agreed to pay \$7 million over a period of years to compensate United States nationals whose property had been nationalized or otherwise taken by the Ethiopian government. Under Title I of the International Claims Settlement Act of 1949, the Commission is authorized to determine the validity and amount of such claims to form the basis for distribution of this claims settlement. At the end of 1985, the Commission began planning to conduct this program.

Title V of Public Law 99-93, which became effective on August 16, 1985, authorized the Commission to receive and determine claims of nationals of the United States against Iran which may be settled en bloc by the United States. At present, all claims of United States nationals against Iran are to be considered by the Iran-United States Claims Tribunal located at The Hague in the Netherlands. Claims of \$250,000 or more were submitted to the Tribunal by the claimants themselves, but the Algiers Accords of January 19, 1981, stipulated that claims of less than \$250,000 each were to be presented to the Tribunal on behalf of United States nationals by the United States Government.

At present, the Department of State is presenting the less than \$250,000 claims to the Tribunal. Should a lump sum settlement be reached with Iran, the nearly 2,700 claims for less than \$250,000 would come under the Commission's jurisdiction and the adjudication of these claims would be handled in a much less costly forum for all parties involved. The Commission continued throughout 1985 to assist the Department of State and individual claimants and their attorneys with matters relating to the Iran-United States Claims Tribunal.

During the year, the staff of the Commission responded to over 1,000 requests for information or verification of Commission decisions in past programs. In addition to scholars and attorneys researching

Commission precedents, the Commission serviced many requests from veterans who required certification from Commission records of the periods they were held as prisoners of war during World War II or the Korean conflict, to establish certain benefits under Federal and State laws. Many of the requests were for information to assist individuals with pending claims in West Germany under a program providing certain restitution to victims of the Holocaust.

SECTION III: FINAL REPORT ON THE VIETNAM CLAIMS PROGRAM

On February 25, 1986, the Commission completed a program to determine the validity and amount of claims of United States nationals against the Socialist Republic of Vietnam arising from the nationalization or other taking of property. The program had been authorized by Public Law 96-606 which added title VII to the International Claims Settlement Act of 1949. The Commission made determinations on 534 claims granting awards to 192 claimants in the total principal amount of \$99,471,983.51. The program constituted a pre-adjudication of claims because no claims settlement agreement had been reached with the Socialist Republic of Vietnam to provide funds for the payment of awards made by the Commission. The statute directed that the validity of claims be determined in accordance with applicable substantive law, including international law. For a claim to be found compensable, it had to be established that an interest in property had been nationalized, expropriated, or otherwise taken at a time when it was owned by a United States national. Although the number of claims adjudicated was relatively small in comparison with some of the programs conducted in the past by the Commission, a number of new and challenging issues were presented.

Nationality

The statute authorizing the adjudication of claims specifically directed that a claim might be favorably considered only if the property right on which the claim was based was owned by a national of

the United States on the date of loss. This direction of the statute was but a restatement of traditional international law which allows the United States to espouse claims against a foreign government only where a loss occurred to someone who was a United States national at the time.

This requirement caused the denial of over 200 claims filed by individuals who were clearly not United States nationals on the date their property was taken. Most of these were Vietnamese nationals who fled South Vietnam at the time of the Communist takeover and could not have become United States citizens, at the earliest, until 1980.

In some of these claims the assertion was made that, prior to the fall of South Vietnam, the Vietnamese owner of the property had transferred ownership to a son, daughter, or even a grandchild who was a United States citizen. In none of these claims, however, was the Commission able to find that an effective transfer of title had occurred prior to the date the property was taken. The claims were denied due to lack of credible contemporaneous evidence in support of the asserted transfers. In several claims, the Commission did recognize a transfer of an interest in property to a United States national under the Vietnamese law of intestacy.²

The nationality requirement also presented difficulties for a corporate claimant. To qualify as a United States national, a corporation or other legal entity had to establish that it was organized under the laws of the United States and that natural persons who were citizens of the United States owned directly or indirectly 50 per centum or more of the outstanding stock of such corporation or entity. To establish the fact of 50% ownership by natural persons who were citizens of the United States, corporate claimants normally provided evidence of the places of residence of the holders of their common stock. In most instances this established that 95% to 100% of all

² Claim of Ahn Quach, Claim No. V-0320, Decision No. V-0318

stock was held by stockholders who were residents of the United States. While the Commission recognized that residence in the United States was not conclusive of the fact that an individual was a United States citizen, the Commission was willing to presume that at least 50% of the stockholders must have been United States citizens.

In one claim,³ a subsidiary of Shell Oil Company had entered into a joint venture with a subsidiary of Cities Service Company under a drilling concession permitting the exploration for oil off the coast of Vietnam. The majority of the stock of Shell Oil Company was held by two foreign corporations so that the Shell subsidiary did not qualify as a United States national. The subsidiary of Cities Service did qualify as a United States national as over 95% of the shares of Cities Service were held by United States residents. It was argued that the Commission should look to the joint venture as constituting a legal entity which qualified as a national of the United States. The Commission agreed that the joint venture could be considered as the claimant. This conclusion was reached due to the fact that under the law of Texas where the joint venture had been formed, a joint venture was considered a separate legal entity, although this view was not universally held throughout the United States. Any doubt concerning this conclusion was removed by reference to the wording of the House report accompanying Public Law 96-606, which cited a joint venture as falling within the definition of "other legal entity" as used in the statute.

In its Proposed Decision, however, the Commission went on to find that the record did not establish that the joint venture qualified as a United States national. While it was established that more than 50% of the indirect ownership of the joint venture was in the hands of stockholders who were residents of the United States, the number did not sufficiently exceed 50% to allow the Commission to presume that 50% of the stock was actually held by natural persons who were

³ Claim of Pecten Vietnam Company, Claim No. V-0522, Decision No. V-0425

also citizens of the United States. The Commission, therefore, made an award for half of the total loss to the subsidiary of Cities Service.

After filing an objection to the Proposed Decision, Shell Oil Company submitted further evidence demonstrating that a higher percentage of the joint venture was indirectly owned by residents of the United States. Evidence was submitted that the two foreign corporations owning most of Shell were, themselves, partially owned by stockholders in the United States which served to increase the indirect ownership of the joint venture by United States residents. A block of the shares of Shell Oil was held on behalf of United States employees of that company which, as a group, were almost entirely United States citizens. The additional evidence was sufficient to allow the Commission, upon reconsideration, to conclude that the joint venture did qualify as a United States national, justifying an award to the joint venture for the entire amount of the loss.

In addition to the requirement that property had to be owned by a United States national on the date of loss, was the further requirement that the claim had to be continuously owned by United States nationals from the date of loss until the date of filing. This rule caused the denial of one claim for the loss of real property owned by a corporation.⁴ The corporation had not been formed under the laws of the United States and therefore it did not qualify as a United States national. The corporation, however, was substantially indirectly owned by United States stockholders. To the extent of such ownership, a valid claim arose. Prior to the date the claim was filed, however, the assets of the corporation were sold to foreign interests. Although claimant argued that the claim against Vietnam was not included in the assets so transferred, the evidence failed to support this contention. The Commission found that all of the assets, including the claim against Vietnam, had been transferred, and denied the claim on the ground that

⁴ Claim of American International Group, Inc., Claim No. V-0332, Decision No. V-0405

it had not been continuously owned by United States nationals from the date of loss until the date of filing.

In some claims, the owner of the property had become a United States citizen within a year or two of the fall of South Vietnam. While the Commission presumed, absent other evidence, that most property in Vietnam had been taken over by the Communist authorities at the time of the fall of South Vietnam on or about May 1, 1975, in these cases the Commission scrutinized the record to see if there was any evidence or reason to believe that the property may not have been taken until after the owner had become a United States citizen. In some of these claims, the property had been occupied by relatives of the owner and, in fact, the premises were not taken until a later date when the relatives either escaped from Vietnam or were expelled from the premises by government officials.⁵ In those claims, the Commission was able to find that the property had not been taken until after it had become owned by a United States citizen.

In one series of claims it was argued that, although the property was owned by Vietnamese nationals, the fact that the United States Government had closed its Embassy with the fall of South Vietnam, and had not granted diplomatic recognition to the present government of Vietnam, resulted in a violation of the claimants' rights under the United States Constitution and that, therefore, the Commission should ignore the statutory requirement for United States ownership of the property on the date of loss. This theory would have required that awards be made to all Vietnamese, whether still in Vietnam or the United States, for all losses of property because the United States had withdrawn from Vietnam. The Commission rejected the theory out-of-hand.

⁵ E.g. Claim of Hien Hoang Clayton, Claim No. V-0118, Decision No. V-0399

A variation on this issue arose due to the fact that a non-Vietnamese citizen was not, in general, allowed to own real property in Vietnam. There was a laborious procedure by which a non-Vietnamese citizen could ultimately apply for permission from the President of the Republic of Vietnam to record title. Due to these requirements, a number of Americans working in Vietnam purchased homes, but placed them in the name of a Vietnamese national, normally, a spouse or fiancée. Technically, under Vietnamese law, therefore, the property was not owned by a United States citizen on the date of loss. The Commission considered this factual situation at length and reached the conclusion that, to the extent the United States citizen could establish an actual financial contribution to the purchase of the residence, the Commission would, in effect, follow the res (in this case the money) and where the investment was lost due to the confiscation of the premises, would find that an award was justified.⁶

Availability and Interpretation of Evidence

One difficulty which continued to plague both claimants and the Commission throughout the program was lack of supporting documentation of the claims. In the weeks leading up to the fall of Saigon, the American business community and Americans employed in Vietnam were being assured by governmental authorities that there was no need for concern and that the political situation would remain stable. Suddenly, American residents in Vietnam were faced with a deterioration of the military situation which necessitated immediate evacuation. Often the claimants had but a few hours' notice of evacuation and were limited to taking with them only one suitcase of personal effects.

It would have been an unfair burden to require the claimants who left under such circumstances to support each aspect of their claim with detailed

⁶ Claim of William Yerabek, Claim No. V-0167, Decision No. V-0257

documentary evidence. On the other hand, the Commission had a responsibility to determine the merits and value of each claim based upon some factual basis beyond mere speculation or vague assertions. The Commission also encountered some claims where claimants had initially indicated that they were not in possession of any supporting documentation but, when faced with the possibility that their claim might be denied or approved only in a minimal amount, grudgingly came forward with documentation which had, in fact, been in their possession, but which substantially contradicted some of their original assertions.

The Commission was willing to consider any evidence available, including affidavits or documentation available in the United States which supported claimant's assertions, such as proof of transfers of U.S. funds to Vietnam on or about the time the claimant asserted that certain investments had been made in Vietnam. In a number of claims claimants were encouraged to come before the Commission and testify under oath to facts within their knowledge so as to allow the Commission to accept that evidence which appeared credible. In some claims, the claimant was able to locate in the United States former builders, architects, or accountants who could provide testimony concerning the construction and description of buildings or, in some cases, copies of building plans or even balance sheets prepared for claimant in Vietnam.

A number of claimants had some documentation concerning the value of their property, such as purchase contracts, tax assessments related to real property or business financial records, all of which were denominated in Vietnamese piasters. The official exchange rate between the piaster and the U.S. dollar had changed significantly during the decade before the fall of South Vietnam. In 1966, the official exchange rate went from 35 piasters to the dollar to 80 piasters to the dollar where it remained until 1972. The piaster was again devalued in 1972 and the exchange rate became 425 piasters to the dollar. It steadily declined thereafter to the last official exchange rate of 755 piasters to the dollar at the

time of the fall of Saigon. In addition, there were as many as three parallel exchange rates applicable to various types of transactions. In interpreting the evidence submitted, the Commission attempted to establish the date of the particular transaction reflected by the evidence available in order to apply the exchange rate applicable at that time to determine the dollar value evidenced by the document. Thus, for example, an agreement reflecting the purchase of a house in the latter part of 1972 for 10,000,000 piasters would be evidence reflecting a value at that time of approximately \$24,000. A similar purchase for 10,000,000 piasters at the end of 1974 would be evidence reflecting a value approximating \$14,000.

The Commission also had to consider the assertion made by many claimants that the stated purchase price of property or the actual balance sheet for a business deliberately understated the actual payment or the actual value of a business for the purpose of reducing tax liability under Vietnamese law.

The Confiscation of Property

Many claimants did not have proof concerning precisely what happened to their property after they left Vietnam. From general information available, it was clear to the Commission, as it had been to the Foreign Relations Committee of the House of Representatives, that the Communist government had expropriated in one form or another, all property previously owned by United States citizens.

It was also clear that with the fall of South Vietnam, the Communist government had moved immediately to requisition unoccupied houses and, absent specific evidence to the contrary, the Commission presumed that such property had been taken as of May 1, 1975. In some instances, real property or businesses had been left in the custody of Vietnamese nationals who ultimately escaped from Vietnam and were able to provide more precise evidence as to the exact date that property was taken over, in which case, the Commission was able to determine the actual date of confiscation.

Many claims were made for personal property such as furniture, household effects, or vehicles which were left behind when the claimant was evacuated. This presented an issue for the Commission as to whether it could be held that such personal property had, in fact, been confiscated by government authority as contrasted with being dispersed into the hands of relatives, neighbors, landlords, thieves, or vandals.

The Commission's research had unearthed a detailed account of the fall of Saigon which related how Communist soldiers immediately went from door to door checking on the ownership of individual dwellings and taking inventory of their contents. Houses previously occupied by Americans, or South Vietnamese who had fled the country, were occupied by the soldiers and all personal property was requisitioned. Vietnamese in possession of any personal property were required to prove that it had not been acquired from Americans who had departed and, absent such proof, the personal property was confiscated. The requisition of such property was confirmed by official communications by the new government. Based upon these accounts, the Commission was able to presume that personal property left behind by departing Americans had, in fact, been confiscated by governmental authority.

One claim presented an issue relating to the loss of a unique type of property. With the evacuation of South Vietnam, substantial quantities of blank travelers checks were left behind in Vietnam. Some were in the vault of the branch of Bank of America in Saigon and the rest were in the hands of agents. Over the ensuing years several hundreds of thousands of dollars worth of these checks had been presented to claimant in the United States for payment. As the signatures on the checks were in agreement, claimant was required to make good on a large percentage of these checks. In some instances, claimant was able to go back against a prior endorser; however, claimant

⁷ Claim of BA Cheque Corporation, Claim No. V-0207,
Decision No. V-0444

had still suffered a loss of almost \$300,000 and asserted that there was the potential for additional future losses of over \$100,000. The issue presented to the Commission was whether the Government of Vietnam was responsible for this loss or whether the checks had come into the hands of private Vietnamese citizens who had processed them without government authority.

As to the checks which claimant established were in the bank vault, the Commission had little difficulty in determining that the government was responsible for their ensuing presentation for payment, as decrees issued by the government authorized the nationalization of all banks and the opening of all bank vaults. Additional decrees of the Communist government required that any individual in possession of property owned by "imperialistic" American companies had to declare such property and turn it over to government authorities subject to substantial penalties for failure of compliance. The Commission, therefore, concluded that the Government of Vietnam was responsible for those checks which had, in fact, been presented to claimant as of December 28, 1980, the date of the passage of Public Law 96-606. The Commission also held, however, that claimant had not suffered a loss until such time as it was required to make good on a traveler's check, and that claimant was therefore not entitled to an award for those checks left behind which had not been presented for payment. The Commission noted that at such time as a settlement with Vietnam occurred, claimant would, undoubtedly, be afforded the opportunity to establish any losses occurring after December 28, 1980.

Certain claims were filed for bank accounts in Vietnamese banks. In a number of previous programs, the Commission had found that claims for bank accounts were not compensable because the foreign government had not confiscated the account, even though currency restrictions had severely limited the use of such accounts and forbade their conversion into United States currency and transfer to the United States. In the case of Vietnam, the Commission's investigation found that bank accounts came under the management of

the revolutionary administration, although permission to make withdrawals could theoretically be obtained for "humanitarian reasons." The Commission supplemented its investigation with interviews with Vietnamese witnesses who had remained in Vietnam for several years after the fall of South Vietnam, and who themselves had no claim for lost bank accounts. From this investigation, the Commission was able to determine that seldom was any withdrawal allowed and even then could only be made in person and in no event in a greater amount than the equivalent of \$33.00. The Commission, therefore, concluded that bank accounts of United States claimants were effectively taken and that an award could be made for this type of loss.⁸

The issue of what constitutes a confiscation of "property" arose in several major claims involving oil drilling concessions.⁹ Several American petroleum companies, either individually or through joint ventures, had been granted exclusive five year concessions by Vietnam to explore for oil in certain offshore locations. To obtain the concessions, the claimants had initially paid a multi-million dollar concession fee and had then expended large sums for seismic studies and test drilling. Under the terms of the concessions, the results of these studies and test wells were shared with the Government of Vietnam. With the fall of South Vietnam, the Communist government revoked these concessions, although they had only been in operation in one case less than one year and in no case more than two years.

After a review of the record and previous precedents of the Commission, the Commission found that such a concession constituted a property right which had been taken. The Commission considered whether the entire value of the concession had been

⁸ Claim of The Pearl S. Buck Foundation, Inc., Claim No. V-0261, Decision No. V-0439

⁹ Claim of Amerada Hess Corporation of Vietnam, Claim No. V-0247, Decision No. V-0427; Claim of Esso Exploration & Production Vietnam, Inc., Claim No. V-0236, Decision No. V-0436

taken or only the percentage representing the remaining years of the concession at the time it was revoked. The Commission concluded that the entire concession had been taken because in each case the claimant had an automatic right to renew the concession for an additional five years and because a concession to explore for oil for only one or two years would have been valueless as it would not have afforded time to carry out reasonable exploration.

The Commission then faced the issue of attempting to determine the value of this property right which had been taken. As oil in commercial quantities had not been discovered by the time the concessions were revoked, there was no basis to speculate as to whether such oil might or might not have been discovered or what, if any profits might have accrued to the claimants. The Commission determined that the concession should be valued by the amount of the capital expenditures made by the claimants. These included, in addition to the concession fee, the capitalized expenses of seismic and geologic studies as well as the drilling costs for test wells. As the results of the studies and drilling had been provided to the Vietnamese government and the fee had been paid to the Vietnamese government, the Commission considered that these capitalized expenses both represented the loss suffered by the claimants and the advantage gained by the Vietnamese government. In each case the Commission excluded from the award normal administrative expenses which it felt could not properly be capitalized.

Valuation

In accord with the general rules of international law, where the Commission determined that property has been taken, it was required to determine the value of that property on the date of loss. In addition, the Commission awarded interest from the date of loss until such future date as a claims settlement is reached with the Government of Vietnam. Establishing the value of different types of property as of the date of loss was made difficult in many claims by the lack of documentation of such value.

As the Commission had determined that personal property left behind in Vietnam had presumptively been taken by government authority, the Commission had to determine the value of a wide range of personal property, including furniture, household effects, artifacts, clothing, vehicles, pets, and similar items. Under the circumstances, it was not reasonable to require the claimants to produce sales receipts or other documentary evidence of the value of such items. The Commission did require an itemized list of the property claimed along with individual estimates of values for the property. The Commission then had to determine whether these asserted values were reasonable. To assist in this determination the Commission consulted mail order catalogues from 1975 and the official N.A.D.A. Used Car Buying Guide for 1975, which sources provided a range of prices for new property in that year. In cases where the estimates reflected an exaggeration of values, or where the estimates were based upon replacement value of new property when the actual property admittedly was several years old, the Commission often found the value of the property to be less than the amount claimed. Where losses of substantial quantities of personal property were made, the Commission also considered such information as the previous income and financial standing of the claimants, as well as the amount of time they had been living in Vietnam, to judge whether it was reasonable that they would have had the amount of personal property asserted. Without some other corroborating evidence, the Commission limited the amount it would award for cash which assertedly had been left behind in a residence.

A number of claims involved the loss of houses in Vietnam. Fortunately, some claimants were able to submit documentary evidence of the actual purchase price, or the actual construction cost of the houses, along with photographs. The Commission also secured information from the United States Foreign Service concerning the construction cost per square foot of various types of housing built for Embassy personnel. The Commission could then use these indicia of value

to determine a reasonable value for houses belonging to other claimants who had no documentary evidence of the value of their particular house.

A number of claims were filed by claimants who had established businesses in Vietnam. These included a wide range of businesses, including import/export, restaurant and catering, manufacturing, hotels and health service institutions, among others. The economic situation in Vietnam for several years before the fall of South Vietnam had been an entrepreneur's delight, and many of the claimants were involved in a number of business interests. Records which were available relating to the value of these businesses were often short on detail and a number of claimants frankly informed the Commission that certain sets of records either deliberately undervalued the property for tax reasons or overvalued property to assist in obtaining financing. In most of the claims of this nature, the Commission encouraged oral hearings so that the businessman could testify under oath and provide details as to the business operation.

In several claims, American corporations submitted detailed balance sheets setting forth the book value of the company's Vietnamese operation.¹⁰ Claimants asserted claim for the book value after certain adjustments were made in the books to more accurately reflect the true value of the assets. It was contended, and the Commission agreed, that physical assets which had been, for accounting purposes, fully depreciated would have had an actual market value of 20% of their original cost. A second contention made was that the depreciated value of assets originally entered at cost at the time of acquisition should be increased by the same percentage that the acquisition cost would have increased to reflect the present depreciated value. The Commission also agreed with this contention, although it had to

¹⁰ Claim of Caltex (Asia) Limited, Claim No. V-0325, Decision No. V-0435; Claim of Esso Eastern Inc., Claim No. V-0235, Decision No. V-0438

decide which of several sets of economic indicators properly reflected the increase in the acquisition cost.

A difficult issue of valuation arose in two interrelated claims for the loss of a Vietnamese general insurance agency and a branch office of a world-wide insurance company, both of which were owned by an American insurance holding company. Following the fall of South Vietnam, the new government eliminated the private sector, both foreign and domestic, from the insurance industry and thereafter all insurance was issued by the government. In the claim for the insurance agency,¹¹ the government occupied the leased premises and ordered that all remaining employees work for the government in writing insurance and adjusting claims. Although it appeared that a number of key personnel of the agency had been evacuated from Vietnam, the Commission concluded the agency had been taken over as a going concern and that in addition to limited tangible assets, the government had acquired intangible assets of value, including the training and experience of the former employees of claimant, as well as its established procedures and forms. Therefore, the Commission found that claimant was entitled to an award for a going concern value substantially higher than the actual net book value. Records produced as to the operation of the insurance agency, however, demonstrated vastly fluctuating income over the previous five years which presented substantial difficulties in determining the fair going concern value. The Commission arrived at a value determination based upon consideration of multiples of average earnings and distributions to stockholders over the preceding five years.

In the companion claim involving an American insurance company,¹² the Commission found that the fact that its Vietnamese office was closed, and that the government had excluded the private sector from

¹¹ Claim of American International Group, Inc., Claim No. V-0331, Decision No. V-0426

¹² Claim of American International Group, Inc., Claim No. V-0330, Decision No. V-0404

the insurance business, did not provide the basis to determine that the insurance company had been taken over as a going concern. The Commission found that the branch office in Vietnam essentially operated as conduit for premiums; that the capital and resources in support of the Vietnamese operation all existed outside of Vietnam; and that, in fact, the loss to the claimant was the loss of the Vietnamese market which the Vietnamese government was entitled to close to the private sector. An award was given for the loss of the assets of the Vietnam branch, including bank accounts, bonds, and accounts receivable.

Conclusion

The Commission certified awards in the principal amount of \$99,471,983.51 to the Department of the Treasury, which will ultimately be responsible for distributing funds to the awardees when such funds become available. As of the conclusion of the program, there were no funds to pay the awards of the Commission. The program was in the nature of a pre-adjudication of claims to determine the total amount of damages suffered by United States nationals. This amount will then form the basis for future negotiations to be carried out by the Department of State with the Socialist Republic of Vietnam to obtain a lump sum claims settlement with that government. When such settlement is obtained, the funds received from Vietnam will be turned over to the Department of the Treasury to be distributed to the awardholders.

SECTION IV: SUMMARY OF PAST PROGRAMS

A. Claims Under the International Claims Settlement Act of 1949

The jurisdiction of the Commission and its predecessor, the International Claims Commission, has encompassed the administration of eighteen claims programs under the authority of the five titles of the International Claims Settlement Act of 1949 [Public Law 81-455, approved March 10, 1950, 64 Stat. 12, 22 U.S.C. 1621], as amended. The Commission has considered claims of U.S. nationals for losses in specific foreign countries as a result of the nationalization or other taking of property during specific periods of time by the governments of those countries. A brief summary of the eighteen claims programs completed in prior years is set forth below. Statistics and a citation to the report of each of these programs appear in sections V and VI of this report.

1. Title I

(a) PANAMA

Under section 4(a) of Title I [64 Stat. 13, 22 U.S.C. 1623(a)] the International Claims Commission was authorized to adjudicate claims of nationals of the United States for the nationalization or other taking of property included within the terms of any claims settlement agreement hereafter concluded between the United States and a foreign government (exclusive of governments against which the United

States declared the existence of a state of war during World War II). Pursuant to this authorization, the International Claims Commission administered a program to consider claims against the Government of Panama upon the conclusion of a claims settlement agreement between the Governments of the United States and Panama on October 11, 1950. This agreement resulted in a fund of \$400,000 for payments on awards in these claims. The Panamanian Claims Program was completed on December 31, 1954.

(b) POLAND

On July 6, 1960, the Governments of the United States and Poland concluded a claims settlement agreement under which the Government of Poland agreed to pay the sum of \$40 million to the United States in full settlement and discharge of certain claims of nationals of the United States. The Commission was authorized to consider claims covered by this agreement under the original provisions of section 4(a) of Title I of the International Claims Settlement Act of 1949 [64 Stat. 13] which granted jurisdiction to determine claims of nationals of the United States included within the terms of any claims agreement hereafter concluded. The Polish Program was completed on March 31, 1966.

(c) YUGOSLAVIA - FIRST PROGRAM

The provisions of Title I authorized the International Claims Commission to administer a program to consider claims of nationals of the United States for the nationalization or other taking of property included within the terms of the Yugoslav Claims Settlement Agreement of July 19, 1948. That agreement resulted in a fund of \$17 million from which payments were made on awards granted in these claims. The first Yugoslav Claims Program was completed on December 31, 1954.

(d) YUGOSLAVIA - SECOND PROGRAM

A second claims agreement was concluded between the Governments of the United States and Yugoslavia on November 5, 1964, covering claims against the Government of Yugoslavia which arose subsequent to the 1948 agreement (see subsection 1(c), above) and providing a fund of \$3.5 million for payment on awards. The second Yugoslav Claims Program was administered by the Commission under authority of section 4(a) of Title I to consider those claims which were covered by the agreement. The program was completed on July 15, 1969.

(e) CHINA - SECOND PROGRAM

In 1972 the Commission completed the first China Claims Program which adjudicated claims by United States nationals which arose between October 1, 1949 and November 6, 1966. (See section 5(a), hereinafter.) On May 11, 1979 an agreement was entered with the People's Republic of China settling claims of nationals of the United States occurring up until the date of the agreement. The Commission thereafter proceeded under section 4(a) of Title I of the International Claims Settlement Act of 1949 (Public Law 81-455, approved March 10, 1950, 64 Stat. 12, 22 U.S.C. 1623), as amended, to adjudicate claims by United States nationals which arose between November 6, 1966 and May 11, 1979. On July 31, 1981, the Commission completed a second China Claims Program. A complete review of the second China Claims Program is contained in the 1981 Annual Report of the Commission.

2. Title II

Title II [Public Law 84-285, approved August 9, 1955, 69 Stat. 562, 22 U.S.C. 1631] provided for the vesting and liquidation of assets which had been blocked by the United States during World War II and for the deposit of the proceeds into separate special funds, according to the respective government owner-

ship of those assets prior to blocking. These proceeds were deposited into funds by the Department of the Treasury which were designated the Bulgarian Claims Fund, the Hungarian Claims Fund, and the Rumanian Claims Fund for payments on awards granted by the Commission in claims against those governments under Title III of the Act. (See subsection 3, below.)

3. Title III

(a) BULGARIA, HUNGARY, AND ROMANIA - FIRST PROGRAMS

Title III [Public Law 84-285, approved August 9, 1955, 69 Stat. 570, 22 U.S.C. 1641] authorized the Commission to consider claims of nationals of the United States for losses arising out of war damages, nationalization, compulsory liquidation, or other taking of property prior to August 9, 1955, by the Governments of Bulgaria, Hungary, and Romania. The Commission was also authorized to consider claims of nationals of the United States for losses based on the failure of these governments to meet certain obligations expressed in the currency of the United States. Payments on the awards granted in these claims were made from the appropriate claims funds created under Title II of the Act. (See subsection 2, above.) The amounts available from these funds for payments were as follows: Bulgarian Claims Fund - \$2,676,234.49; Hungarian Claims Fund - \$2,235,750.65; and Romanian Claims Fund - \$20,164,212.68. The Bulgarian Claims Program, Hungarian Claims Program, and Romanian Claims Program were completed on August 9, 1959.

(b) BULGARIA AND ROMANIA - SECOND PROGRAMS

On July 2, 1963, the United States concluded a formal claims settlement agreement with the Government of Bulgaria under which that Government paid the sum of \$400,000 in settlement of claims of nationals of the United States. This amount was deposited into the Bulgarian Claims Fund to supplement the amount derived from the prior liquidation of Bulgarian assets for

payments on awards granted by the Commission in both Bulgarian Claims Programs. (See subsections 2 and 3(a), above.)

The United States also concluded a formal claims settlement agreement with the Government of Romania on March 30, 1960. This agreement provided for the payment of the sum of \$2.5 million in settlement of claims of nationals of the United States. This amount was deposited into the Romanian Claims Fund to supplement the amount derived from the prior liquidation of Romanian assets for payments on awards granted by the Commission in both Romanian claims programs. (See subsections 2 and 3(a), above.)

The Commission was authorized by an amendment to Title III [Public Law 90-421, approved July 24, 1968, 82 Stat. 420, 22 U.S.C. 1641] to consider claims against Bulgaria and Romania arising since the first programs were authorized (see subsection 3(a), above) but prior to the conclusion of the claims settlement agreements with the governments of those countries. These programs could not be administered under the authority of section 4(a) of Title I of the Act (as in the case of Poland, see subsection 1(b), above) for the United States had declared the existence of a state of war during World War II against the Governments of those countries. The second Bulgarian Claims Program and the second Romanian Claims Program were completed on December 24, 1971, as required by the statute.

(c) HUNGARY - SECOND PROGRAM

On March 6, 1973, the United States concluded a formal claims settlement agreement with the Government of Hungary under which that Government promised to pay the sum of \$18.9 million in settlement of claims of nationals of the United States. Payments on this amount were deposited into the Hungarian Claims Fund to supplement the amount derived from the prior liquidation of Hungarian assets for payments on awards granted by the Commission in both Hungarian claims programs. (See subsections 2 and 3(a), above.) The final payment was made on June 9, 1980.

As in the second programs for Bulgaria and Rumania, the Commission did not have the statutory authority to implement this claims agreement by administering a claims program under section 4(a) of Title I of this Act, for the United States had declared the existence of a state of war against the Government of Hungary during World War II. Pursuant to the provisions of an amendment to Title III [Public Law 93-460, approved October 20, 1974, 88 Stat. 1386, 22 U.S.C. 1641] the Commission was authorized to consider claims of nationals of the United States against the Government of Hungary based on nationalization or other taking of property between August 9, 1955, the date on which the first Hungarian Claims Program was approved, and March 6, 1973, the date of the Agreement with Hungary. The Commission was also authorized to adjudicate certain claims which should have been filed in the first Hungarian Claims Program, but were not, due to an administrative error as a result of which notices of that program had been mailed to non-existent addresses. The second Hungarian Claims Program was completed on May 16, 1977.

(d) ITALY - FIRST PROGRAM

Title III authorized the Commission to consider claims of nationals of the United States against Italy for losses arising from war damages during World War II sustained in areas outside of Italy and territories ceded by Italy under the Treaty of Peace concluded on September 15, 1947. Claims for losses arising from war damages sustained within Italy and territories ceded by Italy were compensated by Italy under the Treaty of Peace. By an amendment to Title III [Public Law 85-604, approved August 8, 1958, 72 Stat. 531, 22 U.S.C. 1641] the Commission was authorized to reconsider claims filed by persons who were nationals of the United States on the date of authorization of the claims program, although not nationals of the United States on the date of the losses upon which their claims were based. Funds for payment of awards granted on these claims by the Commission were derived from the Italian Claims Fund resulting from the payment of

the sum of \$5 million to the United States by the Government of Italy pursuant to a Memorandum of Understanding concluded by the two governments which became effective on August 14, 1947. The Italian Claims Program was completed on August 9, 1959, as required by the statute. Reconsideration of the Italian claims was completed on May 31, 1960.

(e) ITALY - SECOND PROGRAM

The second Italian Claims Program was administered pursuant to an amendment to Title III [Public Law 90-421, approved July 24, 1968, 82 Stat. 420, 22 U.S.C. 1641] as, in effect, an extension of the first Italian Claims Program. (See subsection 3(d), above. The Commission was authorized to consider claims of United States nationals who were eligible to file in the first Italian Claims Program, but who failed to file, and claims of United States nationals against Italy which arose in certain areas ceded by Italy under the Treaty of Peace, including the Dodecanese Islands. Excluded from consideration were claims of persons who had previously received compensation in the first Italian Claims Program, under section 202 of the War Claims Act of 1948, as amended, or under the Treaty of Peace with Italy. Payments on awards granted by the Commission in this program were made from the balance remaining in the Italian Claims Fund following payment of the awards granted by the Commission in the first Italian Claims Program. This program was completed on December 24, 1971.

(f) SOVIET UNION

The Commission administered a Soviet Claims Program pursuant to the provisions of Title III. During this program the Commission was authorized to consider claims of nationals of the United States arising prior to November 16, 1933, against the Soviet Government and claims of nationals of the United States against Russian nationals based on liens acquired with respect to property in the United States which was assigned to the Government of the United States by the Government of the Union of Soviet

Socialist Republics under the Litvinov Assignment of November 16, 1933. Payments on awards in these claims were made from the funds assigned to the United States under the Litvinov Assignment. These funds totaled \$8,658,722.43. This program was completed on August 9, 1959.

4. Title IV

CZECHOSLOVAKIA

Upon enactment of Title IV [Public Law 85-604, approved August 8, 1958, 72 Stat. 527, 22 U.S.C. 1642] the Commission commenced a program to consider claims of nationals of the United States against the Government of Czechoslovakia based upon losses resulting from the nationalization or other taking of property. The funds for payment on awards granted by the Commission in these claims resulted initially in 1962 from the proceeds of the sale of certain Czechoslovakian assets in the United States which amounted to \$8,540,768.41 and subsequently, an additional claims fund in the amount of \$74,550,000 from a claims settlement agreement with Czechoslovakia reached in 1982. (For information concerning a subsequent Czechoslovakian Claims Program see section C,3 infra).

5. Title V

(a) CHINA - FIRST PROGRAM

The first China Claims Program was administered pursuant to an amendment to Title V [Public Law 89-780, approved November 6, 1966, 80 Stat. 1365, 22 U.S.C. 1643]. The Commission was authorized to consider claims of nationals of the United States against the Chinese Communist regime (the Government of the People's Republic of China) based on: (1) losses resulting from the nationalization, expropriation, intervention, or other takings of, or special measures directed against, property by that government; and (2) disability or death of nationals of the United States resulting from actions taken by

or under the authority of that government. The program covered claims for losses which occurred between October 1, 1949, when the present government ascended to power, and November 6, 1966, the date the program was authorized.

When the program was authorized, no funds were available for payment on any losses certified by the Commission in these claims. The statute provided for the determination by the Commission of the validity and amounts of such claims and the certification of the findings to the Secretary of State for possible use in the future negotiation of a claims settlement agreement with the Government of the People's Republic of China. The first China Claims Program was completed on July 6, 1972.

On May 11, 1979, the Governments of the United States and the People's Republic of China concluded a formal claims agreement settling claims of nationals of the United States which arose between October 1, 1949, and the date of the agreement. Pursuant to the provisions of this agreement, the Government of the People's Republic of China agreed to pay \$80.5 million to the United States for deposit in a China Claims Fund by the Department of the Treasury. Under the agreement the schedule of payments to the Department of the Treasury provided for an initial payment of \$30 million on October 1, 1979 and five annual payments of \$10.1 million on the five successive firsts of October beginning in 1980 and ending in 1984. Pursuant to the statutory payment provisions in section 8 of Title I [Public Law 81-455, approved March 10, 1950, 64 Stat. 17, 22 U.S.C. 1627], payments are being made from the China Claims Fund by the Department of the Treasury on the losses certified in this program and awards certified pursuant to the second China Claims Program. (See section A, 1(e) above.)

(b) CUBA

Title V [Public Law 88-666, approved October 16, 1964, 73 Stat. 1110, 22 U.S.C. 1643] authorized the Commission to consider claims of nationals of the United States against the Government of Cuba based

upon: (1) losses resulting from the nationalization, expropriation, intervention, or other takings of, or special measures directed against, property by that government; and (2) disability or death of nationals of the United States resulting from actions taken by or under the authority of that government. The program covered claims for losses which occurred between January 1, 1959 when the present government ascended to power, and October 16, 1964, the date the program was authorized.

When the program was authorized there were no funds available for payments on any losses certified by the Commission in these claims. The statute provided for the determination by the Commission of the validity and amounts of such claims and the certification of the findings to the Secretary of State for possible use in the future negotiation of a claims settlement agreement with the Government of Cuba. The statute, also, precluded the appropriation of funds by Congress for such payments.

The Cuban Claims Program was completed on July 6, 1972.

6. Title VI

GERMAN DEMOCRATIC REPUBLIC

Title VI [Public Law 94-542, approved October 18, 1976, 90 Stat. 2509, 22 U.S.C. 1644] authorized the Commission to receive and determine claims against the German Democratic Republic for losses which arose from the nationalization, expropriation or other taking of property interests of nationals of the United States. When the program was authorized no funds were available for payment of any awards made by the Commission. This program was completed on May 16, 1981 and thereafter the Department of State has entered into negotiations with the German Democratic Republic to obtain a claims settlement to provide funds for the payment of awards issued by the Commission. As of the end of this reporting period, however, such negotiations had not been successfully concluded. A complete review of the German Democratic Republic Claims

Program is contained in the 1981 Annual Report of the Foreign Claims Settlement Commission.

B. Claims Under the War Claims Act of 1948

1. Title I

Pursuant to Title I of the War Claims Act of 1948 [Public Law 80-896, approved July 3, 1948, 62 Stat. 1240, 50 U.S.C. App. 2001], and amendments thereto, the Commission and its predecessor, the War Claims Commission, were authorized to administer ten prisoner of war and civilian internee compensation programs and four war damage and loss compensation programs as follows:

(1) Claims of American citizens who were interned or in hiding in specified areas in the Pacific during World War II [50 U.S.C. App. 2004(a), Sec. 5(a) of the Act];

(2) Claims of members of the Armed Forces of the United States who were imprisoned by the enemy during World War II and who were not fed in accordance with the standards prescribed by the Geneva Convention of July 27, 1929 [50 U.S.C. App. 2005(b), Sec. 6(b) of the Act];

(3) Claims of religious organizations in the Philippines or their personnel for goods and services furnished the civilian American internees and members of the armed Forces of the United States who were held as prisoners of war during World War II [50 U.S.C. App. 2006(a), Sec. 7(a) of the Act];

(4) Claims of members of the Armed Forces of the United States who were mistreated during imprisonment in World War II [50 U.S.C. App. 2005(d), Sec. 6(d) of the Act];

(5) Claims of United States affiliated religious organizations in the Philippines for damage or destruction of educational, medical and welfare institutions and other connected non-religious

facilities during World War II [50 U.S.C. App. 2006(b-c), Sec. 7b-c) of the Act];

(6) Claims of civilian American employees of contractors interned by the Japanese forces during World War II [50 U.S.C. App. 2004(f), Sec. 5(f) of the Act];

(7) Claims of civilian American internees in Korea during the Korean conflict [50 U.S.C. App. 2004(g), Sec. 5(g) of the Act];

(8) Claims of American military personnel captured during the Korean conflict [50 U.S.C. App. 2005(e), Sec. 6(e) of the Act];

(9) Claims of American prisoners of war who served in the Allied Forces during World War II [50 U.S.C. App. 2014, Sec. 15 of the Act];

(10) Claims of American merchant seamen interned during World War II [50 U.S.C. App. 2015, Sec. 16 of the Act];

(11) Claims of American citizens and business entities for losses as a result of the sequestration of accounts, deposits and other credits in the Philippines by the Imperial Japanese Government [50 U.S.C App. 2016, Sec. 17 of the Act];

(12) Claims of non-United States affiliated religious organizations in the Philippines of the same denomination of religious organizations functioning in the United States or their personnel for the value of relief furnished American civilians and prisoners of war and for damage or loss of educational institutions and other connected non-religious facilities during World War II [50 U.S.C. App. 2006(h), Sec. 7(h) of the Act];

(13) Claims based upon the death or imprisonment of Guamanians by the Japanese forces on Wake Island during World War II [50 U.S.C. App. 2004(h), Sec. 5(h) of the Act];

(14) Claims of military and civilian personnel assigned to duty on board the U.S.S. Pueblo who were captured by the military forces of North Korea on January 23, 1968, and thereafter imprisoned by the Government of North Korea [50 U.S.C. App. 2005(e), Sec. 6(e) of the Act].

2. Title II

Under the authority of Title II of the Act [Public Law 87-846, approved October 22, 1962, 76 Stat. 1107, 50 U.S.C. App. 2017] the Commission administered the General War Claims Program. In this program the Commission considered claims of nationals of the United States for loss or destruction of, or physical damage to, property located in certain specified areas of Europe and the Pacific and for certain deaths and personal injuries resulting from military operations during World War II. Section 615 of Public Law 94-542, approved October 18, 1976, allowed consideration of protests relating to awards in decisions on these claims issued during the last ten calendar days of the program (May 7-17, 1967).

All of the above programs were completed by the dates specified by the Congress in the authorizing statutes. Statistics and cites to reports on the above programs may be found in sections V and VI of this report.

It is important to note that the payments of claims and administrative expenses of all but three of these programs were derived from the liquidation of Japanese and German assets under the control of the Attorney General of the United States which had been blocked and vested in the United States during World War II under the Trading With the Enemy Act, rather than from moneys appropriated from the general funds of the United States. These funds were deposited in the War Claims Fund, a special fund set up in the Department of the Treasury for this purpose. The three exceptions mentioned above are the prisoner of war and civilian internee claims programs involving

the Korean conflict and the U.S.S. Pueblo incident. Funds for payment of claims and expenses of these programs were appropriated by the Congress.

C. Claims Under Other Statutory Authority

1. PHILIPPINES

The Commission was authorized to administer a Philippine Claims Program pursuant to Public Law 87-616, approved August 30, 1962 [72 Stat. 411, 50 U.S.C. App. 1751-1785 note]. This statute provided for the payment of the unpaid balances of awards previously granted by the United States-Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946. This program was completed on December 23, 1964. A report may be found at 21 FCSC Semiann. Rep. 11 [July-December 1964].

2. LAKE ONTARIO

The Commission was given the unique assignment, under Public Law 87-587, approved August 15, 1962 [76 Stat. 387], of establishing a program to determine the validity and amounts of claims of citizens of the United States for damages caused during 1951 and 1952 by the construction and maintenance of the Gut Dam in the Saint Lawrence River by the Canadian Government. No funds were provided for the payment of these claims. The Commission's responsibility was to adjudicate the claims and report its findings and conclusions to the President of the United States for such action as he might deem appropriate. The statute further provided that if an agreement was concluded between the Governments of the United States and Canada for arbitration or adjudication of these claims, the Commission would discontinue its activities and transfer its records to the Secretary of State.

The program was commenced in November, 1962 and extensive research and development of claims continued until March, 1965. An agreement with Canada was concluded on March 25, 1965, and, as directed by the statute, the Commission immediately discontinued the program and transferred its records to the Department

of State. A detailed report on the administration of this program is located at 22 FCSC Semiann. Rep. 12 [January-June 1965].

3. Czechoslovakia - Second Program

In 1962, the Commission completed the first Czechoslovakian claims program which adjudicated claims by United States nationals which arose between January 1, 1945 and August 8, 1958. (See section A,4 hereinbefore.) On December 29, 1981, Congress passed the Czechoslovakian Claims Settlement Act of 1981 which approved a claims settlement which had been reached between the United States and Czechoslovakia. Pursuant to the agreement, the Government of Czechoslovakia paid to the United States government \$81.5 million in settlement of all claims to the date of the agreement. The statute directed that three funds be created with the total settlement amount. The principal fund of \$74.55 million was set aside to make further payments on the unpaid balance of awards made in the previous program. A fund of \$5.44 million was set aside to make ex gratia payment to certain claimants whose claims had previously been denied, and as to these claimants, the Commission was directed to redetermine their claims, previously denied due to lack of their United States citizenship on the date of loss, and to find them valid if the owner of the confiscated property had become a United States citizen by February 26, 1948. A final fund in the amount of \$1.5 million was set aside to pay claimants who had suffered losses subsequent to August 8, 1958, and the Commission was directed to conduct a program to determine such claims.

The program was completed on February 24, 1985. A complete review of the Czechoslovakian claims program is contained in the 1984 Annual Report.

V INDEX OF COMPLETED PROGRAMS

A. International Claims Settlement Act of 1949

Claims Against	Title of Act	Statutory Authority		FCSC Publication Cite	
		Public Law	U.S. Code (22 U.S.C.)	Final Report	Other Publications
Bulgaria					
First	III	84-285	1641b	11 Semiann. 1 1971 Ann. 10	Index-Digest, Vol. I Decisions & Annotations
Second	III	90-421	1641b		Index-Digest, Vol. II
China					
First	V	89-780	1643	1972 Ann. 417	Index-Digest, Vol. II
Second	I	81-455	1623(a)	1981 Ann.	
Cuba	V	88-666	1643	1972 Ann. 69	Index-Digest, Vol. II
Czechoslovakia*	IV	85-604	1642	17 Semiann. 140	Index-Digest, Vol. I Decisions & Annotations
German Democratic Republic	VI	94-542	1644	1981 Ann.	
Hungary					
First	III	84-285	1641b	11 Semiann. 1 1977 Ann. 27	Index-Digest, Vol. I Decisions & Annotations
Second	III	93-460	1641b		Index-Digest, Vol. II
Italy					
First	III	84-285	1641c	11 Semiann. 1 1971 Ann. 12	Index-Digest, Vol. I Decisions & Annotations
Second	III	90-421	1641c		Index-Digest, Vol. II
Panama	I	81-455	1623(a)	Settlement of Claims, 1949-1955, p. 217	Index-Digest, Vol. I Decisions & Annotations
Poland	I	81-455	1623(a)	24 Semiann. 35	Index-Digest, Vol. I Decisions & Annotations
Romania					
First	III	84-285	1641b	11 Semiann. 1 1971 Ann. 10	Index-Digest, Vol. I Decisions & Annotations
Second	III	90-421	1641b		Index-Digest, Vol. II
Soviet Union	III	84-285	1641d	11 Semiann. 1	Index-Digest, Vol. I Decisions & Annotations
Yugoslavia					
First	I	81-455	1621	Settlement of Claims, 1949-1955, p. 17	Index-Digest, Vol. I Decisions & Annotations
Second	I	81-455	1623(a)	1969 Ann. 15	Index-Digest, Vol. II

*The Second Czechoslovakian Claims Program was authorized by the Czechoslovakian Claims Settlement Act of 1981. See C. Under Other Statutory Authority, below.

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B. War Claims Act of 1948

Type of Claim	Statutory Authority		FCSC Publication Cite		
	Section of Act	Public Law	U.S. Code (50 U.S.C. App.)	Report	Other Publications
a. Civilian Internee					
Korean Conflict	5(g)	83-615	2004(g)	5 Semiann. 1, 24, 27	
U.S.S. Pueblo Incident	6(e)	91-289	2005(e)	1971 Ann. 19, 24	
Vietnam Conflict	5(l)	91-289	2004(l)	1979 Ann. 9	
World War II (Pacific area)					
Guamanians	5(h)	87-617	2004(h)	19 Semiann. 10, 64	
U.S. Citizens	5(a)	80-896	2004(a)	4 Semiann. 2, 51	Settlement of Clms., 1949-1955
Employees of Contractors	5(f)	83-744	2004(f)	5 Semiann. 1, 25, 27	
World War II (Worldwide)					
Merchant Seamen	16	83-744	2015	5 Semiann. 1, 25, 27	
b. Damage or Loss of Property					
World War II (Philippines)					
Bank Accounts	17	83-744	2016	5 Semiann. 1, 25, 27	
Religious Organizations					
Non-U.S. Affiliated	7(h)	84-997	2006(h)	8 Semiann. 8, 10	
U.S. Affiliated					
Aid to U.S. Armed Forces	7(a)	80-896	2006(a)	4 Semiann. 2, 51	Settlement of Clms., 1949-1955
Educational & Other					
non-Religious Facilities	7(b-c)	82-303	2006(b-c)	4 Semiann. 2, 51	Settlement of Clms., 1949-1955
World War II (Worldwide)					
General (including ship damages	202	87-846	2017(a)	1967 Ann. 95, 197	Decisions & Annotations
and related losses and certain		¹ (94-542)	¹ (2017L), note)	¹ (1977 Ann. 10, 51)	
deaths and personal injuries)					
c. Prisoner of War					
Korean Conflict	6(e)	83-615	2005(e)	5 Semiann. 25	
U.S.S. Pueblo Incident	6(e)	91-289	2005(e)	1971 Ann. 19, 24	
Vietnam Conflict	6(f)	91-289	2005(f)	1979 Ann. 9	
World War II					
U.S. Armed Forces					
Inadequate food rations	6(b)	80-896	2005(b)	4 Semiann. 2, 5	Settlement of Clms., 1949-1955
Inhumane treatment	6(d)	82-303	2005(d)	4 Semiann. 2, 5	Settlement of Clms., 1949-1955
U.S. Citizens					
Allied Armed Forces	15	83-744	2014	5 Semiann. 27	

¹ Authorized protest period for claims decisions issued during last ten days of General War Claims Program.

C. Under Other Statutory Authority

Title of Claims Program	Statutory Authority		Final Report	FCSC Publication Cite	
	Public Law	U.S. Code		Other Publications	
Lake Ontario	87-587		22 Semiann. 12	Decisions & Annotations, p. 666	
Philippine	87-616	50 U.S.C. App. 1751-1785	21 Semiann. 11	Decisions & Annotations, p. 667	
Second Czechoslovakian	97-127	22 U.S.C. note prec. 1642	1984 Ann. 11		

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VI TABLE OF COMPLETED PROGRAMS

A. International Claims Settlement Act of 1949

Title/Country	Program Dates		No. of Denials	No. of Awards	Principal Amt. of Awards	Amt. of Funds for Payment	Approx. % of Awards Paid
	Filing Deadline	Completion					
Title I							
Yugoslavia-First	6/30/51	12/31/54	671	876	\$18,417,112.90	\$17,000,000.00	91%
Yugoslavia-Second	1/15/68	7/15/69	1,354	519	9,685,093.22	3,500,000.00	36.1%
Panama	8/4/52	12/31/54	5	62	441,891.84	400,000.00	90%
Poland	3/31/62	3/31/66	5,147	5,022	100,737,681.63	40,000,000.00	33%
China-Second	8/31/79	7/31/81	78	3	176,454.83	80,500,000.00	\$1,000 plus 40% (est)
Title III							
Bulgaria-First	9/30/56	8/9/59	174	217	4,684,186.46	2,676,234.49	\$1,000 plus 69.710%
Bulgaria-Second	6/30/70	12/24/71	49	13	141,400.00	400,000.00	do
Hungary-First	9/30/56	8/9/59	1,572	1,153	58,277,457.94	2,235,750.65	\$1,000 plus 37%
Hungary-Second	5/15/75	5/16/77	1,159	365	3,729,227.64	18,900,000.00	do
Romania-First	9/30/56	8/9/59	575	498	60,011,347.78	20,164,212.68	\$1,000 plus 37.841474%
Romania-Second	6/30/70	12/24/71	300	85	1,091,102.00	2,500,000.00	do
Italy-First	9/30/56	8/9/59	1,764	482	2,239,413.34	5,000,000.00	100% plus interest
Italy-Second	6/30/70	12/24/71	324	90	Int. 762,294.45	1,086,520.23	do
					348,934.33		
					Int. 110,651.78		
Soviet Union	9/30/56	8/9/59	2,205	1,925	70,466,019.00	8,658,722.43	\$1,000 plus 9.717%

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Title IV

Czechoslovakia	9/15/59	9/15/62	1,346	2,630	² 113,645,205.41	8,540,768.41	\$1,000 plus 5.3038419%
						74,550,000.00	70.92945%
³ Czechoslovakia-Second Benes Claims	(None)	2/24/85		128	43,906,382.07	6,608,000.00 (approx.)	
Post-1958 Claims	2/24/83	2/24/85	1,292	327	5,120,927.83	2,100,000.00 (approx.)	

Title V

Cuba	5/1/67	7/6/72	2,905	5,911	1,851,057,358.00	(None)	
China-First	7/6/69	7/6/72	198	378	196,681,841.00 (In rounded figures)	80,500,000.00	\$1,000 plus 40% (est.)

Title VI

German Democratic Republic	5/16/78	5/16/81	1,999	1,899	77,880,352.69	⁴ (None)	
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¹ \$1,000 plus 40% paid on war damage claims in which awards were granted in this program (38.5% from War Claims Fund).

² Includes both principal and interest inasmuch as payment priorities and limitations under this Title were based on the total amount of awards whereas such priorities and limitations under Titles I and III were based on prorated payments on principal amount of awards, prior to making payments on awards of interest. Breakdown of Czechoslovakia awards amount is: Principal—\$72,614,634; Interest—\$41,030,571 (in round figures).

³ Under U.S.-Czech Claims Agreement signed on January 29, 1982, Czech Government gave \$81.5 million for settlement of all claims of U.S. nationals between January 1, 1945 and February 2, 1982. Under the Czechoslovakian Claims Settlement Act of 1981 (P.L. 97-127) Congress Established \$74.55 million fund for further payment of awards under Title IV and authorized the Commission to redetermine certain claims for losses of property owned by persons who became U.S. nationals as of February 26, 1948 and to adjudicate claims for losses arising after the First Czechoslovakian Claims Program, August 8, 1958. Funds of \$5.4 million and \$1.5 million, respectively, were set aside by Congress for payment of these awards. Because the funds accrue interest until each payment is made, the exact percentage of any payment depends on the date a check is issued.

⁴ As of the end of 1984, formal talks between the United States and the German Democratic Republic for settlement of these claims had taken place, but no final agreement was reached.

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B. War Claims Act of 1948

Authority	Type of Claim	Filing Period	No. of Claims	No. of Denials	No. of Awards	Amount of Awards	Program Completed
Title I							
6(b)	Members of U.S. Armed Forces held as prisoners of war during World War II-\$1 per day for inadequate food rations.	1/30/50-3/31/52	286,315	106,590	179,725	\$ 49,935,899	3/31/55
5(a)	U.S. civilians interned by Japanese or in hiding in U.S. territories and possessions during World War II-\$60 per month.	do	23,000	13,740	9,260	13,679,329	do
7(a)	U.S. affiliated religious organizations and personnel for reimbursement for aid furnished to U.S. Armed Forces and civilians during World War II in Philippines.	do	10,194	10,159	35	2,858,560	do
6(d)	Members of U.S. Armed Forces held as prisoners of war during World War II-\$1.50 per day for forced labor and inhumane treatment.	4/9/52-8/1/54	254,228	75,328	178,900	73,492,926	do
7(b-c)	U.S. affiliated religious organizations for damage or loss of educational and other non-religious facilities in Philippines during World War II.	do	89	41	48	17,238,597	do
6(e)	Members of U.S. Armed Forces held as prisoners of war during the Korean Conflict-\$2.50 per day.	8/21/54-8/21/55	9,877	427	9,450	8,874,458	8/21/56
5(g)	U.S. civilians interned or in hiding during Korean Conflict-\$60 per month.	do	10	0	10	16,774	do
5(f)	U.S. civilian employees of contractors interned by Japanese in U.S. territories and possessions during World War II-\$60 per month.	8/31/54-8/31/55	2,968	746	2,222	4,082,086	8/31/56

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Authority	Type of Claim	Filing Period	No. of Claims	No. of Denials	No. of Awards	Amount of Awards	Program Completed
15	U.S. citizens serving in Armed Forces of U.S. Allies held as prisoners of war during World War II-\$2.50 per day.	do	266	59	206	335,836	do
16	U.S. merchant seamen interned during World War II (not covered under Sec. 5(a))-\$60 per month.	do	385	214	171	333,594	do
17	Sequestration of bank accounts of U.S. civilians, members of U.S. Armed Forces, U.S. business firms, and banking institutions in Philippines during World War II.	do	3,626	459	3,167	10,570,917	do
7(h)	Non-U.S. affiliated religious organizations in Philippines of same denomination of religious organizations functioning in U.S. for reimbursement for aid and damages as covered under Sec. 7(a-c).	8/6/56-2/6/57	109	67	42	8,711,482	2/6/58
5(h)	Detention benefits to Guamanians captured by Japanese on Wake Island during World War II-\$60 per month.	8/31/62-2/28/63	35	0	35	91,782	12/31/63
6(e)	Civilians and members of U.S. Armed Forces assigned to U.S.S. Pueblo who were held as prisoners by North Korea-\$2.50 per day.	9/16/70-6/24/71	82	0	82	68,256	6/24/71
Title II							
202	War damage or loss of property in certain Eastern European countries and territories occupied or attacked by Japanese forces during World War II: damage to ships, losses to insurers, passengers on ships.	7/15/63-1/15/65 ² (11/8/76-2/7/77)	22,605 ² (4)	15,566 ² (1)	7,039 ² (3)	334,783,630 ² (1,026,548)	5/17/67 ² (3/4/77)
Totals, All Programs			613,788	223,396	390,392	\$526,100,674	

¹ Many thousands of claims for prisoner of war benefits were from residents in U.S. possessions and territories occupied by enemy forces during World War II who filed claims for these benefits but were not officially listed as members of duly recognized units of the Armed Forces of the U.S. during World War II. Accordingly, such residents were ineligible to receive prisoners of war benefits, thus the high number of disallowances.

² These dates, numbers, and amount represent protests and additional awards granted pursuant to Section 615 of Public Law 94-542, approved October 18, 1976.

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SECTION VII: LIST OF COMMISSIONERS

WHITNEY GILLILLAND, Chairman, August 6, 1954 to November 15, 1959.

HENRY J. CLAY, August 6, 1954 to August 15, 1958.

PEARL CARTER PACE, August 6, 1954 to March 28, 1962 (became Chairman December 1, 1959).

ROBERT L. KUNZIG, August 21, 1958 to January 19, 1961.

THOMAS W.S. DAVIS, December 2, 1959 to March 28, 1961.

EDWARD D. RE, Chairman, March 29, 1961 to February 27, 1968.

LAVERN R. DILWEG, April 14, 1961 to January 2, 1968.

THEODORE JAFFE, March 29, 1961 to October 21, 1971.

LEONARD v. B. SUTTON, Chairman, March 28, 1968 to October 21, 1969.

SIDNEY FREIDBERG, June 24, 1968 to August 24, 1970.

LYLE S. GARLOCK, Chairman, February 25, 1970 to October 31, 1973 (continued to serve on Commission until July 30, 1975).

KIERAN O'DOHERTY, June 22, 1972 to October 21, 1973.

J. RAYMOND BELL, Chairman, November 1, 1973 to October 21, 1977.

WILFRED J. SMITH, August 28, 1974 to October 21, 1979.

ROBERT E. LEE, April 7, 1976 to October 21, 1978.

RICHARD W. YARBOROUGH, Chairman, December 8, 1978 to October 21, 1981.

FRANCIS L. JUNG, June 28, 1980 to December 6, 1981.

RALPH W. EMERSON, December 31, 1980 to August 28, 1981.

FRANK H. CONWAY, August 31, 1981 to present.

J. RAYMOND BELL, Chairman, October 22, 1981 to September 6, 1983.

JOSEPH W. BROWN, December 7, 1981 to present.

BOHDAN A. FUTEY, Chairman, May 3, 1984 to present.